

### **REMARKS/ARGUMENTS**

Claims 1-8 are pending in the application. Claims 7 and 8 have been cancelled without prejudice pursuant to the Examiner's requirement for restriction. Claims 1-6 stand rejected.

Claims 1-5 have been amended. Claims 9-13 have been added.

No new matter has been added by the foregoing amendments, full support therefor being shown in the drawings and specification as filed. All claims remaining in the application are believed to now be in condition for allowance.

Reconsideration and reexamination of the application is respectfully requested in view of the referenced amendments and the following remarks.

#### **Requirement for Restriction**

Applicants confirm the provisional election on December 9, 2005, of Group I, claims 1-6, in response to the Examiner's requirement for restriction. Claims 7 and 8 are cancelled without prejudice.

#### **Rejection Under 35 U.S.C. §112, ¶2**

Claims 1-6 stand rejected under 35 U.S.C. §112, ¶2, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. The rejection is traversed.

The Examiner has alleged insufficient antecedent basis for specified elements in claims 1, 3, 4, and 5 in support of the rejection. Claims 1, 3, 4, and 5 have been amended to remove the grounds for the rejection.

Applicants submit that claims 1, 3, 4, and 5 are in condition for allowance. Applicants request that the rejection be withdrawn, and that claims 1, 3, 4, and 5 be allowed.

#### **Rejection Under 35 U.S.C. §103(a)**

Claims 1-6 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 3,279,481 to Sones et al. in view of U.S. Patent No. 5,924,432 to Thies et al. The rejection is traversed.

Sones '481 discloses a dishwasher having a turbidity sensor mounted in an upper portion of the dishwasher and a solid-state semiconductor controller for varying the speed of an AC induction motor in accordance with the type of article being washed, and to modify the speed of the motor proportional to a change in turbidity of the dishwasher liquid determined by the turbidity sensor.

Thies '432 discloses a dishwasher motor driven pump and valve system for delivering dishwasher liquid to one of 2 spray apparatus depending upon the direction of rotation of the motor and pump.

The standards for a finding of obviousness must be strictly adhered to. Simply citing one or more prior art references that illustrate different facets of the invention and then concluding that it would be obvious to combine the references to create the applicant's invention is wholly inadequate.

A claimed invention is unpatentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art....The ultimate determination of whether an invention would have been obvious under 35 U.S.C. §103(a) is **a legal conclusion based on underlying findings of fact.**<sup>1</sup>

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field....Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall

---

<sup>1</sup> The underlying factual inquiries include (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; and (3) the differences between the claimed invention and the prior art. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966).

victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

Most if not all inventions arise from a combination of old elements....Thus, every element of a claimed invention may often be found in the prior art....However, **identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention**....Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, **there must be some motivation, suggestion or teaching of the desirability of making the specific combination** that was made by the applicant....Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved....In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references....The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art....Whether the Patent Office Examiner relies on an express or an implicit showing, **the Examiner must provide particular findings related thereto....Broad conclusory statements standing alone are not "evidence."**

*In Re Werner Kotzab*, 217 F.3d 1365; 55 U.S.P.Q.2d (BNA) 1313 (Fed. Cir. 2000)(citations omitted)(emphasis added).

The combination as made in the office action fails to identify any motivation, suggestion, or teaching in either Sones '481 or Thies '432 of the desirability of combining Sones '481 and Thies '432 to arrive at Applicants' invention. There has been no statement identified in either Sones '481 or Thies '432 as to the desirability of the asserted modification, there has been no discussion of the knowledge of one of ordinary skill in the art or the nature of the problem to be solved, there has been no identification of what the teaching of Sones '481 and Thies '432, the knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to one of ordinary skill in the art as required for a showing of

motivation. The combination as asserted fails to provide any particular findings related to any motivation, suggestion, or teaching of the desirability of modifying combining Sones '481 and Thies '432. The combination as asserted simply relies upon "broad conclusory statements standing alone," which can only lead to the conclusion that the combination as asserted is simply relying on impermissible hindsight reconstruction of Applicants' invention.

Specifically, the assertion that it would have been obvious to "include a pump as disclosed by Thies et al into the dish washer of Sones et al for the purpose of reducing the amount of water used in the washing and rinsing and maintaining the effective washing ability of the dishwasher" on Page 5 of the office action fails to satisfy the legal requirements for supporting an assertion of obviousness. First, the stated purpose of reducing the amount of water used is not found in either Sones '481 or Thies '432. Therefore, the reliance on the stated purpose is unsupportable and the combination fails.

Second, the purpose of Applicants' invention is not to reduce the amount of water used in washing and rinsing or to maintain the effective washing ability of the dishwasher. Applicants' invention has absolutely nothing to do with the Examiner's asserted purpose. Rather, the purpose of Applicants' invention is to measure the turbidity of the rinse liquid and to determine from the measurement of turbidity operating parameters for controlling the rinsing cycle. Reducing the amount of water and maintaining the effective washing ability of the dishwasher are irrelevant to Applicants' invention. Indeed, there is nothing in the Application that even suggests that the amount of water would be reduced by the use of Applicants' invention.

Even if the combination were proper, the combination of Sones '481 with Thies '432 would not reach Applicants' invention. At best, the combination of Sones '481 with Thies '432 would result in a dishwasher having a turbidity sensor adapted to control the rotational speed of the pump, and a pump adapted to deliver dishwasher liquid to one of 2 spray apparatus. However, this is not the invention of claims 1-6.

In relevant part, claim 1 calls for a dishwasher having a turbidity sensor wherein a difference value is derivable from turbidity values associated with upper and lower spray planes,

and parameters for a quantity and a type of soiling can be derived from the turbidity values and the difference value, and a continued course of a rinsing program can be established and controlled with these parameters. Nowhere in either Sones '481 or Thies '432 is there any reference to obtaining difference values from turbidity values, associating turbidity values with upper and lower spray planes, determining parameters for a quantity and type of soiling from the turbidity values and the difference value, or establishing and controlling the continued course of a rinsing program based upon these parameters. The combination of Sones '481 and Thies '432 likewise fails to disclose these elements of claim 1.

The determining of a difference in the values of the turbidity for the upper spray plane and the lower spray plane enables the claimed invention to determine the nature of the soils on the dishes. That is, it enables the claimed invention to determine the quantity and type of soiling. With information regarding the quantity and type of soiling, the rinse program can correspondingly be controlled. The combination of Sones '481 and Thies '432 only use the sensed turbidity to adjust the wash cycle. The combination does not use the turbidity values of the upper and lower spray planes to determine a difference value from which the quantity and type of soiling are derived and the rinse program adjusted accordingly. Therefore, claim 1 is novel and non-obvious in view of the combination. As such, claim 1 is patentable over Sones '481 in view of Thies '432.

For these reasons, claims 1-6 are allowable over Sones '481 in view of Thies '432. Applicants request withdrawal of the rejection, and the allowance of claims 1-6.

New claims 9-13 are also not obvious over Sones '481 in view of Thies '432. In relevant part, new claim 9 calls for a dishwasher in which a difference value in the turbidity values for the upper and lower wash planes is determined, with the difference value used to control the rinse program. The combination does not disclose determining a separate turbidity value for the upper and lower spray planes, let alone using those separate turbidity values to determine a difference value for controlling the rinse cycle. Therefore, claim 9 is novel and not-obvious in view of the combination. Claims 10-13 are likewise novel and non-obvious.

Applicants: Clemens Jung et al.  
Filed: November 14, 2003  
Page 10 of 10

Serial No.: 10/713,304  
Docket No.: IT20030011/71354-345

For the above reasons, claims 9-14 are allowable over Sones '481 in view of Thies '432. Applicants request the allowance of claims 9-14.

It is respectfully submitted that all of the claims in the application are allowable over the prior art of record. Prompt notification of allowability is respectfully requested.

Respectfully submitted,

CLEMENS JUNG ET AL.

Dated: March 14, 2006

By: /Mark A. Davis/  
Michael F. Kelly, Reg. No. 50,859  
Mark A. Davis, Reg. No. 37,118  
McGARRY BAIR PC  
171 Monroe Avenue, NW, Suite 600  
Grand Rapids, Michigan 49503  
616-742-3500

G0215710.DOC